

Exhibit 4

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UNITED STATES DISTRICT COURT

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SOUTHERN DISTRICT OF NEW YORK

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AUSTIN FENNER and IKIMULISA LIVINGSTON,

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Plaintiffs,

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vs.

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NEWS CORPORATION, NYP HOLDINGS, INC.,

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d/b/a THE NEW YORK POST and DAN GREENFIELD

11

and MICHELLE GOTTHELF,

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Defendants.

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C O N F I D E N T I A L

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ATTORNEYS' EYES ONLY

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VIDEOTAPED DEPOSITION OF MICHELLE GOTTHELF

19

New York, New York

20

Thursday, March 29, 2012

21

22

23

24

Reported by: David Henry

25

JOB NO. 47779

Confidential Attorneys' Eyes Only

Page 38	Page 39
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Fenner worked for the Post and do you know</p> <p>3 the dates?</p> <p>4 A. He was --</p> <p>5 MR. LERNER: The question is do</p> <p>6 you know the dates.</p> <p>7 A. Yes.</p> <p>8 Q. So when did Austin Fenner begin</p> <p>9 working for the Post?</p> <p>10 A. May of 2007.</p> <p>11 Q. And when did he leave?</p> <p>12 A. November of 2009.</p> <p>13 Q. Okay. So during this period when</p> <p>14 Austin Fenner worked for the Post, in other</p> <p>15 words from May, 2007 to November, 2009, who</p> <p>16 were the editors on the metro desk?</p> <p>17 A. I'm trying to think. Me, Dan</p> <p>18 Greenfield, Billy Gorta, Neil Sloane, Kate</p> <p>19 Sheehy was still -- Michael Hechtman.</p> <p>20 That's all I can recall right now going</p> <p>21 through.</p> <p>22 Q. So during the time when Austin</p> <p>23 Fenner worked for the Post, were there any</p> <p>24 black editors on the metro desk?</p> <p>25 A. On the metro desk, any -- no.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. Do you know when the last black</p> <p>3 editor on the metro desk worked there?</p> <p>4 A. I do. I believe -- yes.</p> <p>5 Q. When was that?</p> <p>6 A. I believe 2001.</p> <p>7 Q. So there has not been a black</p> <p>8 editor on the metro desk since 2001?</p> <p>9 A. Yes.</p> <p>10 Q. What does your job specifically</p> <p>11 entail? In other words describe to me what</p> <p>12 your daily job is.</p> <p>13 A. I oversee the newsroom, I develop</p> <p>14 stories, I look after reporters, full-time</p> <p>15 reporters, part-time reporters, editors, I</p> <p>16 put together a news list of viable stories,</p> <p>17 stories we're working on. That's pretty</p> <p>18 much the gist of it.</p> <p>19 Q. Do you make assignments? Do you</p> <p>20 assign reporters to stories?</p> <p>21 A. Yes, I do.</p> <p>22 Q. How do you determine which</p> <p>23 reporters to assign to which stories?</p> <p>24 A. Oh, it depends.</p> <p>25 Q. Give me an example.</p>
Page 40	Page 41
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. Depends on who is available, what</p> <p>3 their strengths are, what their schedule</p> <p>4 is. I mean it's completely varied, there</p> <p>5 is no way of explaining it. It's just</p> <p>6 every day something different.</p> <p>7 Q. Okay. Do you ever have to</p> <p>8 rewrite stories?</p> <p>9 A. Yes.</p> <p>10 Q. How often do you rewrite stories?</p> <p>11 A. Can't put a number on it.</p> <p>12 Q. So is that just part of your</p> <p>13 daily job?</p> <p>14 A. Yes.</p> <p>15 Q. Do you rewrite a lot of stories?</p> <p>16 A. Depends on what you mean by</p> <p>17 rewrite. Top to bottom rewrite, no, not a</p> <p>18 lot of stories; like reworking from</p> <p>19 beginning to end, no. That's what I try to</p> <p>20 avoid in my job because it's so</p> <p>21 time-consuming. But I'm an editor. I fix</p> <p>22 copy, I make tweaks.</p> <p>23 Q. Does the term rewrite have a</p> <p>24 specific meaning in your profession?</p> <p>25 MR. LERNER: Objection.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. It has -- specific meaning, it</p> <p>3 has a number of meanings.</p> <p>4 MR. LERNER: The question was</p> <p>5 does it have a meaning.</p> <p>6 A. Yes.</p> <p>7 Q. What is the specific meaning? If</p> <p>8 someone in your profession uses the term</p> <p>9 rewrite, what does that mean?</p> <p>10 A. It could mean a person who</p> <p>11 writes, it could mean the act of rewriting.</p> <p>12 Q. Okay, I mean what I'm trying to</p> <p>13 get at is it sounded like in one of your</p> <p>14 answers a couple of answers back you said</p> <p>15 something like I don't want to use the term</p> <p>16 rewrite. But to rewrite, does that mean</p> <p>17 you rewrite the story completely?</p> <p>18 A. Well, that's one version of the</p> <p>19 word rewrite, is rewriting a story. But</p> <p>20 rewrite can also apply to an assignment.</p> <p>21 Q. So if you just had to say tweak a</p> <p>22 story, change a couple of sentences, would</p> <p>23 you consider that a rewrite?</p> <p>24 MR. LERNER: Objection.</p> <p>25 A. No.</p>

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Page 74	Page 75
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. Would that include Ikimulisa</p> <p>3 Livingston?</p> <p>4 A. Yes.</p> <p>5 Q. And Austin Fenner?</p> <p>6 A. No, I'm talking about his direct</p> <p>7 reports.</p> <p>8 Q. So he was loud with</p> <p>9 Ms. Livingston?</p> <p>10 A. When he didn't get the news</p> <p>11 update he wanted or when she was not</p> <p>12 handling the story he wanted, in a way he</p> <p>13 wanted it done, he would get a little loud.</p> <p>14 Q. A little loud?</p> <p>15 A. Well, he would get loud.</p> <p>16 Q. Are you saying he shouted at</p> <p>17 Ms. Livingston?</p> <p>18 A. Yes.</p> <p>19 Q. Did you ever hear him yourself</p> <p>20 shouting at her?</p> <p>21 A. I heard him shouting at a number</p> <p>22 of employees.</p> <p>23 Q. Which specific employees, do you</p> <p>24 recall him shouting at?</p> <p>25 A. His direct reports.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. Who were they?</p> <p>3 A. Just give me a second. I will</p> <p>4 give them all to you. I just have to</p> <p>5 recall them. Ms. Livingston was one of</p> <p>6 them. Denise Buffa, Alex Ginsberg;</p> <p>7 sometimes I just mentally have to go</p> <p>8 through all the courts. Stephanie Cohen,</p> <p>9 Kieran Crowley, and Celine Algar, I think I</p> <p>10 got -- if I remember another one I will --</p> <p>11 Q. Fair enough. Were there any</p> <p>12 other issues with Zach Haberman other than</p> <p>13 the story that he didn't pitch and the fact</p> <p>14 that he was loud and yelled at various</p> <p>15 employees?</p> <p>16 A. No.</p> <p>17 Q. Those were the two issues?</p> <p>18 A. Yes.</p> <p>19 Q. The next name on the list is Eric</p> <p>20 Lenkowitz, associate metro editor. Was</p> <p>21 Mr. Lenkowitz associate metro editor in</p> <p>22 2009?</p> <p>23 A. I can't say for the full year,</p> <p>24 but during 2009, yes.</p> <p>25 Q. Is Mr. Lenkowitz black?</p>
Page 76	Page 77
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. And I'm not sure if I asked you</p> <p>4 this. Mr. Haberman, is he black?</p> <p>5 A. No, he is white.</p> <p>6 Q. And what race is Mr. Lenkowitz?</p> <p>7 MR. LERNER: Objection.</p> <p>8 A. He is white.</p> <p>9 Q. And is he still in that position,</p> <p>10 Mr. Lenkowitz?</p> <p>11 A. Yes.</p> <p>12 Q. The next name is Neil Sloane,</p> <p>13 associate metro editor. Was he associate</p> <p>14 metro editor in 2009?</p> <p>15 A. Yes.</p> <p>16 Q. Is he black?</p> <p>17 A. No, he is white.</p> <p>18 Q. And is he still in that position?</p> <p>19 A. Yes.</p> <p>20 Q. The next name is Michael</p> <p>21 Hechtman, associate metropolitan editor.</p> <p>22 Is he black?</p> <p>23 A. He is white.</p> <p>24 Q. And is he still in that position?</p> <p>25 A. He is.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. Did you testify the last black</p> <p>3 employee in the metro section as far as you</p> <p>4 know was in 2001?</p> <p>5 A. Rephrase the question.</p> <p>6 Q. Let me just ask this. When was</p> <p>7 the last time you understand that there was</p> <p>8 a black editor at the metro desk?</p> <p>9 A. When was the last time?</p> <p>10 Q. Right.</p> <p>11 A. It was either 2000 or 2001.</p> <p>12 Q. And who was that?</p> <p>13 A. Lisa Baird.</p> <p>14 Q. And how did Lisa Baird end up</p> <p>15 leaving --</p> <p>16 MR. LERNER: Objection.</p> <p>17 Q. -- the Post.</p> <p>18 A. I don't have direct knowledge.</p> <p>19 Q. What's your understanding?</p> <p>20 MR. LERNER: Objection.</p> <p>21 A. That she was terminated.</p> <p>22 Q. Do you know who terminated her?</p> <p>23 A. I have no direct knowledge.</p> <p>24 Q. Did you work for the Post in</p> <p>25 2001?</p>

Confidential Attorneys' Eyes Only

Page 142	Page 143
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 editorial positions from internal</p> <p>3 candidates?</p> <p>4 MR. LERNER: Objection.</p> <p>5 A. I'm sorry, repeat that again?</p> <p>6 Q. Does the Post have a policy of</p> <p>7 trying to promote editorial and columnists</p> <p>8 from within its organization?</p> <p>9 A. I know of no policy.</p> <p>10 Q. Was Doug Montero a columnist at</p> <p>11 the Post?</p> <p>12 A. Yes.</p> <p>13 Q. Was his column ever taken away</p> <p>14 from him?</p> <p>15 MR. LERNER: Objection.</p> <p>16 A. Yes.</p> <p>17 Q. Do you know why?</p> <p>18 A. I just know it would be</p> <p>19 embarrassing for Mr. Montero.</p> <p>20 Q. Okay, well, why was it taken</p> <p>21 away?</p> <p>22 A. I don't know beyond that.</p> <p>23 Q. Okay. Did Mr. Green ever</p> <p>24 approach you and suggest that he write a</p> <p>25 column addressing the chimpanzee cartoon</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 that appeared in the paper?</p> <p>3 A. Yes.</p> <p>4 Q. And when I say chimpanzee</p> <p>5 cartoon, you understand I'm talking about</p> <p>6 with the three bullet holes and the two</p> <p>7 cops?</p> <p>8 MR. LERNER: Objection.</p> <p>9 A. I do, yes.</p> <p>10 Q. So did Mr. Green ever approach</p> <p>11 you asking about that, about writing a</p> <p>12 column in response to the cartoon?</p> <p>13 A. Yes, he sent me an e-mail.</p> <p>14 Q. And what did he want to do? What</p> <p>15 did Mr. Green want to do?</p> <p>16 A. From my interpretation of the</p> <p>17 e-mail, was to mend fences by the column.</p> <p>18 Q. And what was your response?</p> <p>19 A. I thought he was brave to inject</p> <p>20 himself in that controversy and I told him</p> <p>21 I would send the idea to Col Allan.</p> <p>22 Q. And did you?</p> <p>23 A. Yes.</p> <p>24 Q. And what did Col Allan say?</p> <p>25 A. He said thank you, but no.</p>
Page 144	Page 145
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. That's all he said?</p> <p>3 A. That's the gist of it. I don't</p> <p>4 recall exactly. It was pleasant, thank</p> <p>5 you, but no.</p> <p>6 Q. Do you know if anyone from</p> <p>7 Governor Patterson's office ever offered to</p> <p>8 give Mr. Green an interview regarding the</p> <p>9 cartoon?</p> <p>10 A. I don't know.</p> <p>11 Q. Did Mr. Green ever tell you that?</p> <p>12 A. No, he did not.</p> <p>13 Q. Do you have any basis for</p> <p>14 thinking that there was no such offer?</p> <p>15 MR. LERNER: Objection.</p> <p>16 A. No basis. I had a political</p> <p>17 editor he could have spoken to. I wasn't</p> <p>18 approached.</p> <p>19 Q. How many of the editors at the</p> <p>20 paper as a whole, the New York Post, are</p> <p>21 black?</p> <p>22 MR. LERNER: Objection.</p> <p>23 A. How many of the editors?</p> <p>24 Q. How many editors at the Post are</p> <p>25 black as far as you know?</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 MR. LERNER: Objection.</p> <p>3 A. I don't know all of the editors</p> <p>4 at the New York Post.</p> <p>5 Q. How many editors approximately</p> <p>6 are there at the New York Post?</p> <p>7 MR. LERNER: Objection.</p> <p>8 A. I have no idea how many editors</p> <p>9 approximately there are at the New York</p> <p>10 Post.</p> <p>11 Q. Okay. Can you name any black</p> <p>12 editors at the New York Post?</p> <p>13 MR. LERNER: Objection.</p> <p>14 A. Robert George, editorial page,</p> <p>15 assistant editor. Currently?</p> <p>16 Q. Yes.</p> <p>17 A. Outside of my section, I don't</p> <p>18 know of many people at the New York Post.</p> <p>19 Q. Other than Robert George, are</p> <p>20 there any others you can name that worked</p> <p>21 there during the time when Mr. Fenner</p> <p>22 worked for the paper?</p> <p>23 A. Yes.</p> <p>24 Q. Who were they?</p> <p>25 A. A good friend of mine, Jay</p>

Page 158

1 Gotthelf - CONFIDENTIAL
 2 Q. Can you tell me what you mean by
 3 that?
 4 A. She is -- her copy is clean. She
 5 is a clean writer, but she doesn't
 6 understand the New York Post writing style.
 7 She has -- repeatedly told her she needs
 8 the flair, and she also doesn't discern the
 9 news line very easily in a news story
 10 before she turns the story in, she just
 11 writes it almost in a chronology instead of
 12 finding the news line in the story.
 13 Q. Anything else?
 14 A. She also doesn't fill in the
 15 holes. She's left out key details in a
 16 story, in stories which Mr. Fenner also
 17 did. I just happened to be thinking about
 18 that. But overall that's what I can think
 19 now.
 20 Q. If someone does not develop a
 21 news line, didn't you have a number of
 22 reporters you had that criticism about?
 23 A. Where it's chronic and a
 24 detriment, no. Needing help on one story
 25 is one thing, or two stories. Chronically,

Page 160

1 Gotthelf - CONFIDENTIAL
 2 it, if she's covering something like a
 3 trial or something, she will get very good
 4 notes. She's a very good note-taker.
 5 We've seen that in her.
 6 Q. Anything else that you can point
 7 that, good qualities of Ms. Livingston?
 8 A. I think she's also very
 9 disarming.
 10 Q. What do you mean by that?
 11 A. She can get people in the field
 12 to talk to her.
 13 Q. So she's a good interviewer?
 14 A. She's a good interviewer. In
 15 general she's a good interviewer.
 16 Q. Is that an important part of
 17 being a reporter?
 18 A. Everything is very important, but
 19 yes, I see that she's getting better at
 20 that.
 21 Q. What about Austin Fenner,
 22 anything that you can point to that you
 23 think are his good qualities as a reporter?
 24 A. Mr. Fenner, he's pleasant, he's
 25 also disarming, very nice, he -- if he was

Page 159

1 Gotthelf - CONFIDENTIAL
 2 which then takes up time, which then makes
 3 the story late, which then makes the
 4 newspaper late, which then results in us
 5 not having sales, it's -- no, not
 6 chronically.
 7 Q. Do you think Ms. Livingston is a
 8 good reporter as opposed to a good writer?
 9 A. I think Ms. Livingston could be a
 10 good reporter.
 11 Q. What do you mean by that?
 12 A. I think she is heading in that
 13 direction.
 14 Q. Do you believe she's been
 15 improving?
 16 A. Yes.
 17 Q. How so?
 18 A. She is thinking about -- thinking
 19 more on her feet while she's at news
 20 assignments.
 21 Q. Is there anything else that
 22 Ms. Livingston does well in terms of being
 23 a reporter?
 24 A. She's -- in terms of being a
 25 reporter, she does -- she -- how can I put

Page 161

1 Gotthelf - CONFIDENTIAL
 2 given an assignment that was very specific,
 3 he, you know, he would on occasion nail it.
 4 Q. Can you give me an example of an
 5 assignment that he nailed?
 6 A. Yes, I can. We sent him to,
 7 before Cardinal Dolan was Cardinal Dolan,
 8 when he was bishop, we sent him to
 9 interview Mr. Dolan -- well, Reverend
 10 Dolan -- then Reverend Dolan, and he got
 11 the interview.
 12 Q. Was that a big story in the New
 13 York area?
 14 A. It was a good get.
 15 Q. Was that an exclusive?
 16 A. I believe so.
 17 (Gotthelf Exhibit 3, NPY-FL
 18 831-832, marked for identification.)
 19 Q. Would you take a moment and look
 20 at this, please. And for the record this
 21 is Bates stamped 831 and 832. Have you
 22 seen this document before?
 23 A. I believe I have.
 24 Q. Did Ms. Kelly show you this
 25 document when it was prepared?

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Page 162

1 Gotthelf - CONFIDENTIAL
 2 A. No, because there was a number of
 3 issues with it. Yes, I did not see this
 4 document when it was prepared.
 5 Q. Do you remember when you saw the
 6 document?
 7 A. I believe it may have been part
 8 of the disclosures paperwork. Discovery.
 9 Q. Are you saying your attorney
 10 showed it to you? Because I don't want to
 11 know about anything you told your attorney.
 12 A. No, I --
 13 Q. I just don't know what you mean
 14 by it's part of discovery.
 15 MR. LERNER: Don't guess. If
 16 you remember, you remember.
 17 A. I don't remember.
 18 Q. But you remember seeing it
 19 before?
 20 A. No, I actually don't. I remember
 21 seeing something to this effect, but I
 22 don't know if this is --
 23 Q. Fair enough.
 24 A. So I don't remember this
 25 document.

Page 164

1 Gotthelf - CONFIDENTIAL
 2 A. Yes, it was.
 3 Q. How many front pages would you
 4 say it encompassed, the story as a whole?
 5 A. As a whole, I don't recall.
 6 Q. Was it multiple?
 7 A. Yes.
 8 Q. And did Ms. Livingston's byline
 9 appear on the stories?
 10 A. Yes, on the stories pertaining to
 11 the court aspect of it.
 12 Q. Right, the Sean Bell stories?
 13 A. Yes.
 14 Q. Would it be fair to say that she
 15 played an important role in the story?
 16 A. Yes.
 17 Q. And then it goes on to say she
 18 was told by Michelle that she was being
 19 moved off the Queens court because she was
 20 not performing the job and this was
 21 mentioned in her APA too. Do you remember
 22 telling Ms. Kelly or Ms. Jehn that?
 23 A. Yes, that she was
 24 underperforming, yes.
 25 Q. So that's a true statement?

Page 163

1 Gotthelf - CONFIDENTIAL
 2 Q. Okay. I want to call your
 3 attention to a couple of things. If you
 4 look at the second paragraph, it says in
 5 2008 APA she was below standards. Just so
 6 we're all clear, what is an APA?
 7 A. It's an appraisal of a reporter
 8 or editor's work for a fiscal year.
 9 Q. And it says the Sean Bell story
 10 was one of the primary examples. Do you
 11 see that?
 12 A. Yes.
 13 Q. Do you remember telling Ms. Jehn
 14 and/or Ms. Kelly that the Sean Bell story
 15 was one of the primary examples why
 16 Ms. Livingston was below standards?
 17 A. I remember saying it was one of
 18 the examples.
 19 Q. What was the Sean Bell story?
 20 A. Sean Bell and his friends were
 21 outside of a bar and he was shot and killed
 22 by police.
 23 Q. Was it an important story?
 24 A. It was.
 25 Q. Was it a front page story?

Page 165

1 Gotthelf - CONFIDENTIAL
 2 A. That she was underperforming in a
 3 Queens courthouse. And these are not my
 4 direct words.
 5 Q. I know, that's what I'm asking,
 6 that's what I mean, because you didn't
 7 write this obviously.
 8 A. I didn't write this, I didn't --
 9 Q. Right. So what I'm asking is
 10 just initially, is this an accurate
 11 description of what you described at this
 12 meeting with Mr. -- with Ms. Kelly and
 13 Ms. Jehn?
 14 A. That she was not -- she was
 15 underperforming in Queens court, yes.
 16 Q. When was the meeting with
 17 Ms. Livingston that was described in this
 18 memo?
 19 A. The meeting when I reassigned her
 20 from Queens to --
 21 Q. Right.
 22 A. Approximately November of 2008.
 23 Q. Was anyone else at the meeting
 24 with -- again we're talking about the
 25 meeting with Ms. Livingston. Was anyone

Confidential Attorneys' Eyes Only

Page 174		Page 175	
1	Gotthelf - CONFIDENTIAL	1	Gotthelf - CONFIDENTIAL
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Page 176		Page 177	
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Confidential Attorneys' Eyes Only

Page 222	Page 223
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6 REDACTED</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11 Q. Was one of your complaints about</p> <p>12 Ms. Livingston that she was not developing</p> <p>13 story ideas?</p> <p>14 A. Yes. Not consistently, but yes.</p> <p>15 (Gotthelf Exhibit 4, NYP-FL 236,</p> <p>16 marked for identification.)</p> <p>17 Q. I'm going to give you an exhibit</p> <p>18 marked Exhibit 4. For the record this is</p> <p>19 marked NYP-FL 236.</p> <p>20 A. Yes.</p> <p>21 Q. Have you seen this before?</p> <p>22 A. I recall it.</p> <p>23 Q. And what is it?</p> <p>24 A. This is a story pitch by</p> <p>25 Ms. Livingston to me.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. And what's the date on it?</p> <p>3 A. August 26, 2009.</p> <p>4 Q. And do you see there it says</p> <p>5 solid good idea?</p> <p>6 A. Yes. I wrote that. It was a</p> <p>7 solid good idea.</p> <p>8 Q. So was this a solid good idea for</p> <p>9 a story?</p> <p>10 MR. LERNER: Objection.</p> <p>11 A. It was and it would have been</p> <p>12 better if she made some phone calls on it</p> <p>13 before she pitched to me and realized that</p> <p>14 all the information on it was wrong, but it</p> <p>15 was a good effort, yes. Part of it was</p> <p>16 Ms. Livingston was not pitching viable</p> <p>17 ideas.</p> <p>18 (Gotthelf Exhibit 5, NYP-FL 235,</p> <p>19 marked for identification.)</p> <p>20 Q. I'm going to mark the next</p> <p>21 exhibit Gotthelf 5. Have you seen this</p> <p>22 before?</p> <p>23 A. Yes, I recall this e-mail.</p> <p>24 Q. What is it?</p> <p>25 A. This is two story ideas from</p>
Page 224	Page 225
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Ms. Livingston.</p> <p>3 MR. LERNER: Take your time and</p> <p>4 read it if you need to.</p> <p>5 Q. So what is the date on this</p> <p>6 e-mail?</p> <p>7 A. September 1, 2009.</p> <p>8 Q. And can you just read the body of</p> <p>9 it for me, I mean just the top where you</p> <p>10 wrote.</p> <p>11 A. I love the second story.</p> <p>12 Q. So this was another example of a</p> <p>13 story that Ms. Livingston pitched that you</p> <p>14 loved?</p> <p>15 A. Yes, I really liked this story.</p> <p>16 Q. This was a good story?</p> <p>17 A. This one made the paper and it</p> <p>18 was very good, yes.</p> <p>19 (Recess taken: 4:26-4:49 p.m.)</p> <p>20 FURTHER EXAMINATION BY MR. CLARK:</p> <p>21 (Gotthelf Exhibit 6, NYP-FL 240,</p> <p>22 marked for identification.)</p> <p>23 Q. Ms. Gotthelf, I'm going to hand</p> <p>24 you what we've marked Gotthelf 6. If you</p> <p>25 could take a moment to review that, please.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And what is this?</p> <p>4 A. This is a story pitch from</p> <p>5 Ms. Livingston. It is a story pitch that</p> <p>6 she didn't check the newspaper to see if we</p> <p>7 previously reported it.</p> <p>8 Q. And what's the date on it?</p> <p>9 A. It is October 27, 2009.</p> <p>10 Q. And you write, we did that story</p> <p>11 when the band was introduced, but thanks</p> <p>12 for the idea, exclamation point, right?</p> <p>13 A. Yeah, that was -- I wrote that,</p> <p>14 yes.</p> <p>15 Q. In other words so it was a good</p> <p>16 idea?</p> <p>17 A. Yeah, it's a good idea if it</p> <p>18 hadn't been done, if she hadn't, you know,</p> <p>19 not read the paper all along to realize</p> <p>20 that this was done in the paper, but it's a</p> <p>21 good idea.</p> <p>22 Q. It was such a good idea you</p> <p>23 actually did a story on it?</p> <p>24 A. Yes, we did.</p> <p>25 Q. So your only criticism is that</p>

Confidential Attorneys' Eyes Only

Page 226	Page 227
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 she hadn't read the story in the paper?</p> <p>3 A. That's a huge part of the</p> <p>4 process. Anybody can pitch stories that</p> <p>5 have been out in other newspapers.</p> <p>6 Q. So you think that she saw this in</p> <p>7 the newspaper and then decided to go to you</p> <p>8 after she read it in the newspaper?</p> <p>9 MR. LERNER: Objection. Go</p> <p>10 ahead.</p> <p>11 A. I'm not saying that at all. But</p> <p>12 I'm saying part of the process of pitching</p> <p>13 a news idea is to check the library to see</p> <p>14 if it's been done before pitching it to an</p> <p>15 editor.</p> <p>16 Q. And where is the library located?</p> <p>17 A. On her phone.</p> <p>18 Q. On her phone?</p> <p>19 A. 930-8735. I've been in the</p> <p>20 library three times in my 11 years at the</p> <p>21 New York Post. You get your library on the</p> <p>22 phone. They have librarians there that are</p> <p>23 there to check your stories.</p> <p>24 Q. So the library at the New York</p> <p>25 Post, you expected her to call the library</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 at the Post before running an idea by you?</p> <p>3 A. Absolutely. A hundred percent,</p> <p>4 yes.</p> <p>5 Q. Were there other reporters who</p> <p>6 pitched ideas to you that had already been</p> <p>7 run in the Post?</p> <p>8 A. Not -- it happens. It happens.</p> <p>9 Q. Did you ever tell Ms. Livingston</p> <p>10 after she sent you this, make sure that you</p> <p>11 check with the library to see if it's been</p> <p>12 done before?</p> <p>13 A. Ms. Livingston has been told that</p> <p>14 repeatedly. I just happened to be nice in</p> <p>15 this e-mail.</p> <p>16 Q. So when you said thanks for the</p> <p>17 idea, you didn't really mean that?</p> <p>18 A. No, I was -- I very much meant</p> <p>19 I'm glad you're thinking of ideas.</p> <p>20 Q. So in other words did you</p> <p>21 consider it a positive sign she had come up</p> <p>22 for a good?</p> <p>23 (Gotthelf Exhibit 7, NYP-FL 239,</p> <p>24 marked for identification.)</p> <p>25 Q. I'd like to give you what's</p>
Page 228	Page 229
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 marked Gotthelf 7. Take a minute to look</p> <p>3 at that, please. And I don't know if I put</p> <p>4 this on the record. Gotthelf 5 is NYP-FL</p> <p>5 235 and Gotthelf 6 is NYP-FL 240. And</p> <p>6 Gotthelf 7 is NYP-FL 239.</p> <p>7 What is the document I've just</p> <p>8 given you, Gotthelf 7?</p> <p>9 A. This is a story idea that</p> <p>10 Ms. Livingston pitched.</p> <p>11 Q. Okay, and what's the date on</p> <p>12 this?</p> <p>13 A. This is November 12, 2009.</p> <p>14 Q. Could you just read what you</p> <p>15 wrote.</p> <p>16 A. I likely, Holz pitched that idea</p> <p>17 yesterday but failed to follow through on</p> <p>18 the transportation aspect of it today.</p> <p>19 They're doing it tomorrow but good idea.</p> <p>20 Q. So this was another good idea for</p> <p>21 a story that Ms. Livingston pitched to you,</p> <p>22 correct?</p> <p>23 A. Ms. Livingston currently works</p> <p>24 for me. She does pitch ideas on occasion.</p> <p>25 This was a good one. A lot more of these</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 ideas came in 2009 when she was out of the</p> <p>3 courthouse.</p> <p>4 Q. I'm sorry, say that again? I</p> <p>5 just didn't follow you. A lot of these</p> <p>6 ideas came in 2009 when she was out of the</p> <p>7 courthouse?</p> <p>8 A. When she was -- after she was out</p> <p>9 of the courthouse, when she was reassigned</p> <p>10 to field reporting. It just shows how much</p> <p>11 a better fit it is for her.</p> <p>12 Q. I'm going to give you what I'm</p> <p>13 marking as Gotthelf 8.</p> <p>14 (Gotthelf Exhibit 8, NYP-FL 238,</p> <p>15 marked for identification.)</p> <p>16 Take a look at that, please. And</p> <p>17 this is Bates stamped NYP-FL 238.</p> <p>18 A. Yes. I've read the document.</p> <p>19 Q. And what is this document?</p> <p>20 A. This is a story pitch from</p> <p>21 Ms. Livingston.</p> <p>22 Q. And what's the date on it?</p> <p>23 A. December 7, 2007.</p> <p>24 Q. Okay. And could you read what</p> <p>25 your comment was?</p>

Confidential Attorneys' Eyes Only

Page 230	Page 231
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. I really like.</p> <p>3 Q. So was this another good idea for</p> <p>4 a story that Ms. Livingston pitched to you?</p> <p>5 A. Yes, on the surface. I don't</p> <p>6 know where it went, but I said I really</p> <p>7 liked it and I really liked it.</p> <p>8 Q. Okay, you don't know if this ever</p> <p>9 ran though?</p> <p>10 A. I don't, I'm sorry.</p> <p>11 Q. That's fine. We'll mark this</p> <p>12 Gotthelf 9 and give it to you. If you</p> <p>13 could take a look at that, ma'am.</p> <p>14 (Gotthelf Exhibit 9, NYP-FL</p> <p>15 829-830, marked for identification.)</p> <p>16 A. I've read it.</p> <p>17 Q. And what is this?</p> <p>18 A. This is a story we assigned to</p> <p>19 Ms. Livingston.</p> <p>20 Q. And it's dated January 12, 2010?</p> <p>21 A. Yes.</p> <p>22 Q. Was this a story that you really</p> <p>23 liked?</p> <p>24 A. Yeah, sure.</p> <p>25 Q. So did you assign this to</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Ms. Livingston because you thought she</p> <p>3 would do a good job on a story you really</p> <p>4 thought was a good story?</p> <p>5 A. I assigned it -- I don't know,</p> <p>6 but it could be a situation where the next</p> <p>7 runner up got the assignment.</p> <p>8 Q. What do you mean by the next</p> <p>9 runner up?</p> <p>10 A. The next person who was available</p> <p>11 in the field to get an assignment would get</p> <p>12 an assignment. This does not mean take Kim</p> <p>13 Livingston because I think she's going to</p> <p>14 be the person for this job to do this</p> <p>15 assignment.</p> <p>16 Q. So this could have just been</p> <p>17 anybody?</p> <p>18 A. That could have been fill in the</p> <p>19 blank name.</p> <p>20 Q. Do you know that for certain or</p> <p>21 are you just saying that could be the case?</p> <p>22 A. I'm willing to go on that for</p> <p>23 certain, yes.</p> <p>24 Q. So if the next one up had been a</p> <p>25 man, for instance, you've have said send a</p>
Page 232	Page 233
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 man out on a story about --</p> <p>3 A. Sure, I don't discriminate</p> <p>4 against who I send to assignments.</p> <p>5 Q. The question isn't really about</p> <p>6 discrimination. Are there certain</p> <p>7 reporters who you think are more</p> <p>8 appropriate for certain assignments?</p> <p>9 A. You send out a reporter to an</p> <p>10 assignment.</p> <p>11 Q. So you would never dispatch a</p> <p>12 reporter to an assignment based on whether</p> <p>13 he or she was male or female?</p> <p>14 MR. LERNER: Objection.</p> <p>15 A. I might do it in a rape situation</p> <p>16 where a woman might feel more comfortable</p> <p>17 talking to a woman, but I can't think of</p> <p>18 another situation.</p> <p>19 Q. So you wouldn't think that women</p> <p>20 with, as this describes it, pear-shaped</p> <p>21 figures might be more comfortable speaking</p> <p>22 to a woman than to a man?</p> <p>23 A. Now, no. No.</p> <p>24 (Gotthelf Exhibit 10, NYP-FL</p> <p>25 1902, marked for identification.)</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. Let me give you what's been</p> <p>3 marked as Gotthelf 10. And this is Bates</p> <p>4 stamped NYP-FL 1902. Have you seen this</p> <p>5 before?</p> <p>6 A. Yes.</p> <p>7 Q. And what's the date on this?</p> <p>8 A. November 27, 2009.</p> <p>9 Q. And this is an e-mail from you to</p> <p>10 Ms. Livingston?</p> <p>11 A. It is.</p> <p>12 Q. And this says nice exclu today,</p> <p>13 exclamation point?</p> <p>14 A. Yes.</p> <p>15 Q. Does that that mean?</p> <p>16 A. It means you had a nice exclusive</p> <p>17 story today.</p> <p>18 Q. Is that something that is good</p> <p>19 for a reporter, you want him to have</p> <p>20 exclusive stories?</p> <p>21 A. Absolutely. I was very pleased</p> <p>22 to send this e-mail.</p> <p>23 (Gotthelf Exhibit 11, NYP-FL</p> <p>24 714-715, marked for identification.)</p> <p>25 Q. Gotthelf 11 is Bates stamped 714</p>

Confidential Attorneys' Eyes Only

<p style="text-align: right;">Page 294</p> <p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Could you read your e-mail to</p> <p>4 Jessie dated 4:24 p.m.</p> <p>5 A. Yes. Nichole Bodie is better,</p> <p>6 but people like Austin, he's apparently</p> <p>7 very sneaky, plus always good to hire an</p> <p>8 African-American.</p> <p>9 Q. What did you mean apparently he's</p> <p>10 very sneaky?</p> <p>11 A. I was told that Mr. Fenner was a</p> <p>12 very sneaky reporter which made me very</p> <p>13 happy. That is a -- sneaky reporters are</p> <p>14 great reporters.</p> <p>15 Q. And what does sneaky mean in this</p> <p>16 context?</p> <p>17 A. Sneaky means sort of a reporter</p> <p>18 who breaks away from the pack of other</p> <p>19 reporters to go their separate way and</p> <p>20 break a news line. I can give examples of</p> <p>21 it. A person who is online at Rikers to</p> <p>22 interview someone but has already had it</p> <p>23 set up with a lawyer to go in but just</p> <p>24 hangs out with the other reporters to</p> <p>25 pretend like nothing is going on and then</p>	<p style="text-align: right;">Page 295</p> <p>1 Gotthelf - CONFIDENTIAL</p> <p>2 gets the exclusive interview. Sneaky is a</p> <p>3 high compliment.</p> <p>4 Q. Was Austin ever sneaky in his</p> <p>5 employment with the Post?</p> <p>6 A. I wish he was a lot sneakier.</p> <p>7 I'm trying to recall. I don't recall.</p> <p>8 Q. And the final sentence, always</p> <p>9 good to hire an African-American. Why did</p> <p>10 you write that?</p> <p>11 A. I was saying Mr. Fenner was well</p> <p>12 liked, which is a good attribute, he was</p> <p>13 very sneaky, which is a good attribute, and</p> <p>14 plus it's, you know, always good to hire an</p> <p>15 African America for diversity in the</p> <p>16 newsroom.</p> <p>17 Q. So is it fair to say that the</p> <p>18 vast majority in the newsroom are not</p> <p>19 African-American?</p> <p>20 A. The newsroom is --</p> <p>21 Q. I'm sorry, is it fair to say the</p> <p>22 vast majority of the reporters at the metro</p> <p>23 desk are not African-American?</p> <p>24 A. At the metro desk, I'm sorry, I</p> <p>25 just --</p>
<p style="text-align: right;">Page 296</p> <p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. The reporters that you manage,</p> <p>3 the vast majority are white, correct?</p> <p>4 A. Yes, the vast majority are white.</p> <p>5 Q. And was this that you were aware</p> <p>6 that you needed more diversity in the</p> <p>7 newsroom?</p> <p>8 A. I'm a huge advocate of diversity.</p> <p>9 If we have a chance to diversify, that's</p> <p>10 great.</p> <p>11 Q. So you're a huge advocate of</p> <p>12 diversity but you currently only have three</p> <p>13 -- or actually how many do you have</p> <p>14 currently?</p> <p>15 MR. LERNER: How many what?</p> <p>16 Objection.</p> <p>17 Q. How many African-American</p> <p>18 reporters do you have?</p> <p>19 A. Well, since I've been metro</p> <p>20 editor, I've hired two new African-American</p> <p>21 reporters.</p> <p>22 Q. How many do you have now?</p> <p>23 MR. LERNER: I don't think she</p> <p>24 was finished with her answer.</p> <p>25 A. Just going back to diversity,</p>	<p style="text-align: right;">Page 297</p> <p>1 Gotthelf - CONFIDENTIAL</p> <p>2 I've hired three Hispanic reporters. I can</p> <p>3 -- if you want to give me some time I could</p> <p>4 count how many I have now.</p> <p>5 Q. I'm not asking you about</p> <p>6 Hispanic. I just want to know how many</p> <p>7 African-American reporters do you have that</p> <p>8 you supervise right now?</p> <p>9 A. Just give me one more minute.</p> <p>10 Full-time?</p> <p>11 Q. Yes, full-time.</p> <p>12 A. I count four.</p> <p>13 Q. So in that e-mail, clearly you</p> <p>14 were taking Austin's race into account as a</p> <p>15 criteria for him working for you, right?</p> <p>16 A. No, I was laying out his</p> <p>17 attributes from what I heard that he is</p> <p>18 likeable, sneaky, and plus since I'm a fan</p> <p>19 of diversity, he's African-American.</p> <p>20 Q. And if you're such a fan of</p> <p>21 diversity, why are there no black editors</p> <p>22 on the metro desk?</p> <p>23 MR. LERNER: Objection.</p> <p>24 A. I take the most qualified</p> <p>25 applicants and many people on my desk I've</p>

Confidential Attorneys' Eyes Only

Page 298	Page 299
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 inherited.</p> <p>3 Q. But there have been openings for</p> <p>4 editors on the metro desk, have there not?</p> <p>5 A. Yes, and I've put applications</p> <p>6 and I've hired highly qualified people for</p> <p>7 my desk.</p> <p>8 Q. And have you ever tried to hire</p> <p>9 an African-American for one of those</p> <p>10 positions?</p> <p>11 MR. LERNER: Objection.</p> <p>12 A. I don't base anything on race. I</p> <p>13 look for the best candidate.</p> <p>14 Q. So that's a no?</p> <p>15 MR. LERNER: Objection.</p> <p>16 A. Sorry, restate the question.</p> <p>17 Q. Have you ever tried to hire an</p> <p>18 African-American for one of the vacant</p> <p>19 editorial positions?</p> <p>20 MR. LERNER: Objection. What</p> <p>21 is tried to hire?</p> <p>22 A. I don't understand that. I'm</p> <p>23 sorry, if you could explain.</p> <p>24 Q. Have you ever put forward any</p> <p>25 African-American candidates for the</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 positions that have opened up on the</p> <p>3 editorial or the -- on the editorial staff?</p> <p>4 MR. LERNER: Objection.</p> <p>5 A. I have tried out an</p> <p>6 African-American on my city desk.</p> <p>7 Q. Who was that?</p> <p>8 A. Leonard Green.</p> <p>9 Q. When was this?</p> <p>10 A. Right before I made my -- I was</p> <p>11 going to say my most recent hire, but give</p> <p>12 me a second, I can -- when I had an</p> <p>13 opening.</p> <p>14 Q. And why wasn't he hired</p> <p>15 full-time?</p> <p>16 A. Mr. Green didn't want the job and</p> <p>17 wanted to continue writing.</p> <p>18 Q. Mr. Green turned it down?</p> <p>19 A. Mr. Green tried out on the desk</p> <p>20 for several days and when I asked him if he</p> <p>21 liked it, he said he wanted to continue</p> <p>22 writing.</p> <p>23 Q. Are you familiar with the travel</p> <p>24 patterns of your various employees?</p> <p>25 MR. LERNER: Objection.</p>
Page 300	Page 301
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. I don't understand familiar with</p> <p>3 travel patterns.</p> <p>4 Q. Well, you dispatch your reporters</p> <p>5 to stories, correct?</p> <p>6 A. Me and my associate metro</p> <p>7 editors.</p> <p>8 Q. So if someone goes out of town on</p> <p>9 a story, would you know about that, right?</p> <p>10 MR. LERNER: Objection.</p> <p>11 A. Oftentimes.</p> <p>12 Q. Can you name any reporter who was</p> <p>13 dispatched on out of town stories more</p> <p>14 frequently than Austin Fenner during the</p> <p>15 two years that he was employed there?</p> <p>16 A. Yes.</p> <p>17 Q. Who are they?</p> <p>18 A. Lorena Mangeli and Rebecca</p> <p>19 Rosenberg.</p> <p>20 Q. And how often were Lorena and</p> <p>21 Rebecca sent out of town?</p> <p>22 A. I don't know.</p> <p>23 Q. So how do you know that they were</p> <p>24 sent out of town more often than Austin?</p> <p>25 A. Because I looked at my travel</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 assignments to determine who was sent out</p> <p>3 the most and Mr. Fenner during his time</p> <p>4 period was not.</p> <p>5 Q. You looked at travel assignments,</p> <p>6 you have a record of all the assignments</p> <p>7 that people were sent out of town?</p> <p>8 A. Yes. We paid for these</p> <p>9 assignments.</p> <p>10 Q. Okay. Do you know if that --</p> <p>11 those documents have been produced in this</p> <p>12 case?</p> <p>13 MR. LERNER: Objection.</p> <p>14 A. I don't know.</p> <p>15 (Gotthelf Exhibit 20, NYP-FL</p> <p>16 797-798, marked for identification.)</p> <p>17 Q. I'd like to give you a document</p> <p>18 marked Gotthelf 20. Take a look at that,</p> <p>19 please. This is an e-mail from you on</p> <p>20 November 9, 2009, is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And for the record, this is Bates</p> <p>23 stamped NYP-FL 797. Could you read what it</p> <p>24 says there on the text?</p> <p>25 A. Yes. Make sure you have</p>

Confidential Attorneys' Eyes Only

Page 306

1 Gotthelf - CONFIDENTIAL
 2 MR. LERNER: Objection.
 3 A. Useless on one day for an
 4 assignment and worthless overall, yes.
 5 MR. LERNER: The question was
 6 are useless and worthless synonyms.
 7 THE WITNESS: Oh, I'm sorry.
 8 MR. LERNER: She's got a
 9 clarification.
 10 MR. CLARK: Okay, go ahead.
 11 THE WITNESS: Are useless and
 12 worthless synonyms, no.
 13 MR. LERNER: I've got something
 14 for the record. Paul, can you
 15 communicate with co-counsel after
 16 Ms. Gotthelf completes her question?
 17 Because it's distracting, especially
 18 when you turn away and she's still
 19 talking because she doesn't really
 20 know if she should keep it talking, if
 21 you're stopped listening, or if she
 22 should stop and wait until you are
 23 listening again. So it is distracting
 24 to the witness for you to do that. So
 25 I'd just ask you to kind of try to

Page 307

1 Gotthelf - CONFIDENTIAL
 2 keep your attention on the witness and
 3 not discuss things.
 4 MR. THOMPSON: And this is Ken
 5 Thompson on the record. Virtually
 6 every deposition that Mark Lerner has
 7 taken in this case, he and his counsel
 8 have engaged in multiple conversations
 9 during the middle of questions
 10 pending, have passed notes, have
 11 caused quite a spectacle at many
 12 depositions. That is a fact.
 13 MR. LERNER: Well, it's not a
 14 fact. But it's also --
 15 MR. CLARK: We don't have to
 16 argue about it.
 17 MR. LERNER: It's not an
 18 indictment of your side's conduct
 19 during the deposition. I'm merely
 20 observing that on a number of
 21 occasions the witness has been
 22 distracted by communications between
 23 counsel. I understand why you're
 24 communicating and I don't have any
 25 problem with it. I'm just pointing

Page 308

1 Gotthelf - CONFIDENTIAL
 2 out that in these instances the
 3 witness has been distracted.
 4 (Gotthelf Exhibit 22, NYP-FL
 5 1932, marked for identification.)
 6 Q. Ms. Gotthelf, I'm going to hand
 7 you what I've marked Gotthelf 22, and ask
 8 you to take a look at that.
 9 Ms. Gotthelf, actually before you
 10 take a look at that, when you referred in
 11 your last answer, did you call
 12 Ms. Livingston useless in general or just
 13 on a specific occasion?
 14 A. Oh, on a specific occasion.
 15 Q. So on at least one specific
 16 occasion you referred to her as useless?
 17 A. I did, because she was useless to
 18 me on a specific occasion.
 19 Q. Did you say that she was useless
 20 on just one occasion?
 21 A. That I recall.
 22 Q. Okay. Could you take a look at
 23 the --
 24 A. Sure.
 25 MR. CLARK: Mr. Lerner, you've

Page 309

1 Gotthelf - CONFIDENTIAL
 2 just complained about us and now
 3 you're making a commotion. Please,
 4 we've got about 30 minutes left. Can
 5 we just try and get through this
 6 without a lot of commotion please.
 7 MR. LERNER: Let's go forward.
 8 Q. So this is for the record NYP-FL
 9 1932, and this is an e-mail from you to
 10 Jesse Angelo dated January 5, 2006,
 11 correct?
 12 A. Yes.
 13 Q. Can you read that text of the
 14 e-mail that you wrote?
 15 A. Yes. Kim, thanks so much for
 16 coming up with the story. That was
 17 literally printed in four magazines and our
 18 Pulse section. Good looking out yo.
 19 Q. So you were making fun of Kim,
 20 correct?
 21 MR. LERNER: Objection.
 22 A. I was not making fun of Kim, I
 23 was making fun of Kim's story pitch, which
 24 appeared in our paper and in other
 25 magazines.

Confidential Attorneys' Eyes Only

Page 310

1 Gotthelf - CONFIDENTIAL
 2 Q. So when you said that it was
 3 literally printed in four magazines, I
 4 mean, you're being ironic there, right?
 5 MR. LERNER: Objection.
 6 Q. In other words you're not
 7 literally saying yeah, thanks so much, your
 8 story was literally printed in four
 9 magazines, right? That's what you meant?
 10 MR. LERNER: Objection.
 11 A. I don't recall specifically, but
 12 I do know that this appeared in multiple
 13 magazines at the time, and it probably had
 14 a snarky tone to it.
 15 Q. And then you say good looking out
 16 yo.
 17 A. Yes.
 18 Q. Is that a misprint or did you
 19 actually put Y-O exclamation point?
 20 A. No, I put that, yes.
 21 Q. Were you making fun of
 22 Ms. Livingston because you think that's the
 23 way black people speak?
 24 MR. LERNER: Objection.
 25 A. Absolutely not.

Page 312

1 Gotthelf - CONFIDENTIAL
 2 A. I have no idea what it is.
 3 It's --
 4 Q. What's the name of this white
 5 girlfriend that you got this from?
 6 A. Lauren Klein Dunkel.
 7 Q. What's the last name?
 8 A. Dunkel, D-U-N-K-E-L.
 9 (Recess taken: 6:50-6:57 p.m.)
 10 FURTHER EXAMINATION BY MR. CLARK:
 11 Q. I'd like to ask you about the
 12 cartoon that was published in February,
 13 2009 showing a chimpanzee who was shot.
 14 Do you know the cartoon I'm referring to?
 15 A. Yes, I do.
 16 Q. What is your opinion about the
 17 cartoon, personal opinion?
 18 MR. LERNER: Objection.
 19 A. It's -- it was offensive.
 20 Q. How so?
 21 A. I understand its intent, but it
 22 just didn't look good.
 23 Q. Okay. Well, what do you
 24 understand the intent to have been?
 25 A. That the white police officers

Page 311

1 Gotthelf - CONFIDENTIAL
 2 Q. Well, what did you mean by that,
 3 good looking out yo?
 4 A. I use that phrase continuously to
 5 mean, to be on top of it. Absolutely not.
 6 Q. You use the phrase yo regularly?
 7 MR. LERNER: Objection.
 8 A. Regularly.
 9 Q. How many times a day do you use
 10 the phrase yo?
 11 A. I can't put a number on it. I
 12 call my metro editors yo.
 13 Q. You call your metro editors yo?
 14 A. I do. Hey yo.
 15 Q. Where does that phrase come from,
 16 good looking out, yo?
 17 A. One of my girlfriends was using
 18 it at the time.
 19 Q. What girlfriend?
 20 A. I have a girlfriend, just a
 21 friend.
 22 Q. Is she black or white?
 23 A. She's white.
 24 Q. Isn't this sort of black slang?
 25 MR. LERNER: Objection.

Page 313

1 Gotthelf - CONFIDENTIAL
 2 were firing at a monkey that was
 3 representing Congress.
 4 Q. Why do you think that it was
 5 meant to represent Congress?
 6 A. Because after it was published
 7 the top editor said it was meant to
 8 represent Congress.
 9 Q. And you just believed them
 10 because they said it?
 11 MR. LERNER: Objection.
 12 A. I don't believe they meant it to
 13 alienate our readership.
 14 Q. Why do you say it was offensive?
 15 A. Offensive?
 16 Q. Yes.
 17 A. It just didn't sit well with me.
 18 Q. Why is it offensive?
 19 A. Because you have four white
 20 police officers firing at anything, I find
 21 offensive just on that basis.
 22 Q. Is it offensive because it could
 23 be interpreted to represent that the
 24 chimpanzee represented a black person?
 25 A. It could be seen that way.

Confidential Attorneys' Eyes Only

Page 318	Page 319
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Q. Did she actually cry?</p> <p>3 A. This is over the phone.</p> <p>4 Q. Her voice was cracking?</p> <p>5 A. Her voice was cracking.</p> <p>6 Q. Did you say anything else to</p> <p>7 Ms. Livingston?</p> <p>8 A. I don't recall.</p> <p>9 Q. Do you recall if you may have</p> <p>10 apologized to Ms. Livingston?</p> <p>11 A. I didn't apologize to her, but I</p> <p>12 said I felt sorry for how she was feeling.</p> <p>13 I also told her I found it offensive.</p> <p>14 Q. Okay. Why were you sorry for how</p> <p>15 she was feeling?</p> <p>16 A. I was sorry for how everybody was</p> <p>17 feeling that day. It was a very stressful</p> <p>18 day.</p> <p>19 Q. I mean, were you sorry because</p> <p>20 you felt that she as an African-American</p> <p>21 had to see this cartoon?</p> <p>22 A. I was sorry for anybody who felt</p> <p>23 offended by it.</p> <p>24 Q. Did you talk to anyone else at</p> <p>25 the Post about Ms. Livingston's</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 conversation with you and how offended she</p> <p>3 was?</p> <p>4 A. No, I did not.</p> <p>5 Q. You didn't feel any reason to</p> <p>6 explain that you had an employee who was</p> <p>7 highly offended by this?</p> <p>8 A. I had plenty of employees who</p> <p>9 were highly offended by it.</p> <p>10 Q. You also mentioned Dan Mangan.</p> <p>11 He complained?</p> <p>12 MR. LERNER: Can we go off the</p> <p>13 record.</p> <p>14 MR. CLARK: Let's go off the</p> <p>15 record for a second.</p> <p>16 (Recess taken: 7:04-7:10 p.m.)</p> <p>17 FURTHER EXAMINATION BY MR. LERNER:</p> <p>18 Q. Ms. Gotthelf, where were you</p> <p>19 exactly when Ms. Livingston called you to</p> <p>20 complain about the cartoon?</p> <p>21 A. I was at my desk.</p> <p>22 Q. Did she call you on your normal</p> <p>23 office phone?</p> <p>24 A. Yes.</p> <p>25 Q. And do you know what phone</p>
Page 320	Page 321
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 Ms. Livingston was on?</p> <p>3 A. I don't.</p> <p>4 Q. Was Ms. Livingston working that</p> <p>5 day?</p> <p>6 A. Yes, she was.</p> <p>7 Q. So did she call you from the</p> <p>8 assignment?</p> <p>9 A. I don't know.</p> <p>10 Q. When she called you, did she call</p> <p>11 you just to talk to you about the cartoon</p> <p>12 or was this in the context of a larger</p> <p>13 conversation?</p> <p>14 MR. LERNER: Objection.</p> <p>15 A. She left me a message about the</p> <p>16 cartoon and I called her back.</p> <p>17 Q. I see, okay. What did she say in</p> <p>18 the initial message that she left?</p> <p>19 A. That she wanted to talk to me</p> <p>20 about the cartoon.</p> <p>21 Q. Was that all she said?</p> <p>22 A. It was a quick message, yes.</p> <p>23 Q. So you called her back, and what,</p> <p>24 did you call her back on her cell phone or</p> <p>25 what phone did you call her back on?</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 A. I'm sorry, say that again.</p> <p>3 Q. What phone did you call her back</p> <p>4 on? You said you called her back, right?</p> <p>5 A. Yes, I did.</p> <p>6 Q. Okay, so in other words did you</p> <p>7 call her at home, did you call her on her</p> <p>8 cell phone?</p> <p>9 A. I don't recall.</p> <p>10 Q. And what time of day was this</p> <p>11 that the conversation took place?</p> <p>12 A. It was on the day the cartoon</p> <p>13 printed, either morning or mid-day.</p> <p>14 Q. And can you tell me as precisely</p> <p>15 as possible exactly how long the</p> <p>16 conversation lasted?</p> <p>17 A. It was short.</p> <p>18 Q. Meaning five minutes?</p> <p>19 A. Less than five minutes.</p> <p>20 Q. A minute?</p> <p>21 A. It was -- could have been a</p> <p>22 minute or two minutes.</p> <p>23 Q. All right. Did Ms. Livingston</p> <p>24 complain that this cartoon was racist?</p> <p>25 MR. LERNER: Objection.</p>

Confidential Attorneys' Eyes Only

Page 338	Page 339
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 MR. LERNER: You've answered it</p> <p>3 five times already, so go ahead and</p> <p>4 answer it again.</p> <p>5 A. I don't know.</p> <p>6 (Gotthelf Exhibit 23, NYP-FL</p> <p>7 34-44, marked for identification.)</p> <p>8 Q. Okay, I'd like to show you what's</p> <p>9 marked Gotthelf 23. Just take a quick look</p> <p>10 at that. I'm not going to go through it in</p> <p>11 detail. I basically just want to ask you</p> <p>12 if you've ever seen this before.</p> <p>13 A. I have never seen this before.</p> <p>14 Q. Okay, do you know what</p> <p>15 journalisms is?</p> <p>16 A. I do not.</p> <p>17 Q. Have you ever heard of</p> <p>18 journalisms?</p> <p>19 A. I have never heard of</p> <p>20 journalisms.</p> <p>21 Q. Have you ever heard of this</p> <p>22 article Three Things That Need Fixing in</p> <p>23 the New York Post?</p> <p>24 A. I never heard of it before</p> <p>25 Mr. Fenner filed his complaint.</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2 MR. LERNER: Can we just take a</p> <p>3 minute, because we have different</p> <p>4 things. All right. I received</p> <p>5 something different.</p> <p>6 Q. So you just said a minute ago you</p> <p>7 had never seen this article before the</p> <p>8 lawsuit was filed, is that correct?</p> <p>9 A. Yes, that is absolutely correct.</p> <p>10 Q. Do you recall anyone discussing</p> <p>11 this article before the lawsuit was filed?</p> <p>12 A. I do not -- well, absolutely not.</p> <p>13 No-one discussed it in front of me.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 REDACTED</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
Page 340	Page 341
<p>1 Gotthelf - CONFIDENTIAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 Gotthelf - CONFIDENTIAL</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12 REDACTED</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>